

ASSEMBLY BILL

No. 2272

Introduced by Assembly Member Parra

February 22, 2006

An act to amend Section 1475 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2272, as introduced, Parra. Writ of habeas corpus: Notice to prosecuting agency.

Existing law requires a person held in custody who is applying for a writ of habeas corpus to give 24 hour notice of the application to the district attorney of the county wherein the person is held in custody.

This bill would require a person applying for a writ of habeas corpus because of a decision by the Board of Parol Hearings to give 72 hour notice of the application to the district attorney of the county in which the offense was prosecuted.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1475 of the Penal Code is amended to
- 2 read:
- 3 1475. The writ of habeas corpus may be granted in the
- 4 manner provided by law. If the writ has been granted by any
- 5 court or a judge thereof and after the hearing thereof the prisoner
- 6 has been remanded, he shall not be discharged from custody by
- 7 the same or any other court of like general jurisdiction, or by a
- 8 judge of the same or any other court of like general jurisdiction,

1 unless upon some ground not existing in fact at the issuing of the
2 prior writ. Should the prisoner desire to urge some point of law
3 not raised in the petition for or at the hearing upon the return of
4 the prior writ, then, in case such prior writ had been returned or
5 returnable before a superior court or a judge thereof, no writ can
6 be issued upon a second or other application except by the
7 appropriate court of appeal or some judge thereof, or by the
8 Supreme Court or some judge thereof, and in such an event such
9 writ must not be made returnable before any superior court or
10 any judge thereof. In the event, however, that the prior writ was
11 returned or made returnable before a court of appeal or any judge
12 thereof, no writ can be issued upon a second or other application
13 except by the Supreme Court or some judge thereof, and such
14 writ must be made returnable before said Supreme Court or some
15 judge thereof.

16 Every application for a writ of habeas corpus must be verified,
17 and shall state whether any prior application or applications have
18 been made for a writ in regard to the same detention or restraint
19 complained of in the application, and if any such prior
20 application or applications have been made the later application
21 must contain a brief statement of all proceedings had therein, or
22 in any of them, to and including the final order or orders made
23 therein, or in any of them, on appeal or otherwise.

24 Whenever the person applying for a writ of habeas corpus is
25 held in custody or restraint by any officer of any court of this
26 state or any political subdivision thereof, or by any peace officer
27 of this state, or any political subdivision thereof, a copy of the
28 application for such writ must in all cases be served upon the
29 district attorney of the county wherein such person is held in
30 custody or restraint at least 24 hours before the time at which
31 said writ is made returnable and no application for such writ can
32 be heard without proof of such service in cases where such
33 service is required.

34 If such person is in custody for violation of an ordinance of a
35 city which has a city attorney, a copy of the application for the
36 writ must also be served on the city attorney of the city whose
37 ordinance is the basis for the charge at least 24 hours before the
38 time at which the writ is made returnable, provided that failure to
39 serve such city attorney shall not deprive the court of jurisdiction
40 to hear the application.

1 *If the person is applying for a writ of habeas corpus because of*
2 *a parole decision made by the Board of Parole Hearings, a copy*
3 *of the application for the writ shall also be served on the district*
4 *attorney of the county in which the offense was prosecuted at*
5 *least 72 hours before the time at which the writ is made*
6 *returnable and no application for the writ can be heard without*
7 *proof of the service in cases where the service is required.*

O